Supreme Court, U.S.
FILED

95 1 4 26 JAN 10 1996

OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

OCTOBER TERM, 1995

THE ESTATE OF MAURICE HANSEN,

Petitioner,

v.

THE CITY OF NEW HAVEN,

Respondent.

Petition For Writ Of Certiorari To The United States Supreme Court From A Denial Of Said Writ Of Certiorari To The Supreme Court Of The State Of Connecticut

PETITION FOR WRIT OF CERTIORARI

OWEN CHASE
Counsel of Record
At 6 Summit Place
Branford, Connecticut
06405
(203) 248-4770
FRANK P. CANNATELLI
Counsel for Petitioner

March 5, 1996

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

32 pp

QUESTIONS PRESENTED

The questions presented for review are as follows:

1. Did the trial court err in denying the Appellant's motion to articulate the factual basis for its findings regarding the actual performance dates of the contract in question, where the clear weight of the evidence indicated that the Plaintiff performed for a period of one year under the contract, but the Court found performance for only nine months.

2. Did the Appellate Court err when it granted Appellant's Motion for Review but denied the only relevant Relief requested that the trial judge be ordered to articulate the factual basis for his decision to only award damages for nine months.

3. Did the trial court err when it denied Appellant the damages requested for his year's performance, thereby amounting to a denial of Appellant's entitlement to appeal and his property interest in said appeal, thereby denying Appellant his procedural due process of law.

4. Did the Court err in considering count two, the restitutionary count, prior to count one, the breach of contract count, thereby deciding the equitable relief issue without exhausting the legal relief issues first.

5. Did the trial court err in denying both legal and equitable remedies herein.

PETITION FOR WRIT OF CERTIORARI

The Estate of Maurice Hansen respectfully petitions for a writ of certiorari to review the judgment in this case of the Supreme Court of the State of Connecticut.

OPINIONS BELOW

The opinion of the Appellate Court of the State of Connecticut, in appeal number 13380, in *Maurice Hansen et al. v. City of New Haven et al*, argued on April 20th, 1995, before Dupont, Schaller and Spear, Judges, and reported by memorandum of decision in 38 Conn. App. 902, whereby said Judgement of the Superior Court was affirmed; On writ of certiorari to the Connecticut Supreme Court, docket number PSC-94-0370, further was denied on or about September 13, 1995.

Appellant appealed to the Appellate Court of the State of Connecticut. On May 23rd, 1995, the Appellate Court affirmed. Appellant then filed a petition for certification to appeal to the Supreme Court of the state of Connecticut, which was denied on September 13, 1995. On September 22, 1995, Appellant filed a motion to reconsider said denial, which was again denied by the State Supreme Court on **October 16th, 1995**. Appellant files this petition for certiorari within ninety days, or by January 13th, 1996.

JURISDICTION

The Supreme Court denied petitioner's writ of certiorari and said petition to reconsider. The Jurisdiction of this Court is invoked under 28 U.S.C. Section 1257.

PERTINENT CONSTITUTIONAL PROVISIONS

Connecticut Statute 52-263 gives appellant a statutory right to appeal if aggrieved. Once aggrieved by any finding of a superior court inconsistent with law or evidence, appellant's statutory entitlement becomes a property interest pursuant to the Fifth and Fourteenth Amendments. Appellant alleges a property-monetary interest in said appeal since he was denied the full benefit of his entire year-long performance. He is denied the procedure due him because the judge failed to articulate the factual basis for his award of damages for only nine months, and his failure to award restitution from that point on. The relevant Fourteenth Amendment provision is: "No state shall deny any person of life, liberty, or property, without due process of law".

STATEMENT OF THE CASE

Appellant performed moving and storage services for the City of New Haven pursuant to a written contract. Appellant performed these services for over six months, when he received no compensation from the City although they were to pay Appellant monthly. At the end of six months, Appellant could no longer afford to work

for nothing, and he informed the City of his intent to rescind in May or June, or after six months into the contract. Appellant agreed to continue performing for the City, but would seek restitution of all moves and storage at the State of Connecticut rate or charges. Appellant continues to perform until the end of the year, but receives no further compensation. He does receive a late check for approximately $5,000.

Plaintiff originally sued in a two count complaint, alleging breach of contract in count one and restitution in count two. The Judicial Authority had a problem with the inconsistent causes of action, and only agreed that said allegations were proper under the practice book when corporation counsel admitted it could be done. The trial court determined the equitable cause of action first, prior to entertaining the legal cause of action. This resulted in an erroneous determination regarding the actual dates of performance under the contract. The trier of fact erred thereby depriving the estate of Appellant monies due. Appellant testified that he performed for the entire contract period. He also submitted bills illustrating this fact. All Appellee witnesses testified they did not know how long Plaintiff continued to perform. The trier of fact in his memorandum of decision on page five, quotes a letter written from appellant's counsel stating that appellant is rescinding the contract but will perform until such time as the city rebids the contract. Plaintiff expects restitution from this point. Appellant is entitled to his damages on the contract through the date of rescission, and then his restitution from that date until the end of the contract period. The trier has erred in determining the equitable issues before the legal issue regarding damages, contrary

to case law and the Connecticut Practice Book. Plaintiff is entitled to his restitution herein, and since the dates of performance are not clear from the record, the Appellate Court should have sent this case back for a retrial as to those material dates of performance under the contract. Appellant specifically requested an articulation of these dates by the trier, which was denied by both the superior and the appellate courts. Appellant is denied a property right in this appeal, due to the error stated. Lastly, both legal and equitable remedies have to be available to Appellant because until the Court found the proper date of rescission, thereby determining the expectation of the Plaintiff, then Restitution would have to be the only available remedy for performance from that date until the end of the contract period.

REASONS FOR GRANTING CERTIORARI

The federal question was first raised before Appellate Court when motion to articulate was denied by the judge, and appellate court denied motion for review. That court summarily affirmed. The Interests of Justice merit review here.

CONCLUSION

For the reasons stated, this Petition should be heard.

By: Owen Chase
Counsel of Record
6 Summit Place
Branford, CT 06405
Phone: (203) 248-4770
Frank P. Cannatelli

NO. CV93 0342979	:	SUPERIOR COURT
MAURICE HANSEN D/B/A HANSEN MOVING, ET AL.	:	JUDICIAL DISTRICT OF NEW HAVEN AT NEW HAVEN
V.	:	FEBRUARY 22, 1994
THE CITY OF NEW HAVEN, ET AL.	:	

MEMORANDUM OF DECISION

(Filed Feb. 22, 1994)

The Plaintiff brings this action under a two count complaint. The first count alleges that the defendants City of New Haven, and Mayor DeLieto, [hereinafter The City] breached the Contract [hereinafter The Contract] dated December 12, 1986 between the City and Maurice Hansen and Samuel Hansen d/b/a Hansen Movers [hereinafter Hansen].

The First Count alleges that Hansen and the City contracted for a period of December 1, 1986 to December 1,1987 for moving and storage services to remove evictees' goods. Hansen alleges that it fully performed its duties under the Contract and did the work up through November 30, 1987. Hansen was paid only $5,000 and that there is due under the Contract yet unpaid the sum of $177,000 itemized as $150,000 for transportation charges, $22,000 for bin construction and $5,000 for maintenance fees.

In the Second Count Hansen inter alia alleges that the defendant is unjustly enriched in the amount of $177,000.

The Plaintiff argues that it is suing for breach of contract in the first count and restitution in the second count of the complaint.

The Defendant argues that the Plaintiff seeks additional compensation under the Contract contrary to the express terms thereof. The Defendant claims by way of Special Defense that the Plaintiff breached the Contract because it failed to substantially perform its duties as set forth in the Contract; that this action is barred by the applicable statute of limitations; and that said Contract was properly rescinded. The Plaintiff's Reply to the Defendant's Special Defense denies that it failed to substantially perform the scope of services; that the action is barred by the Statute of Limitations; and denies the Contract was properly rescinded.

The City filed a Counterclaim for damages dated May 19, 1993 alleging inter alia that the Plaintiff breached the Contract and that the Plaintiff failed to immediately correct the problems. Hansen denies the allegations that it breached the terms of the Contract; and by way of Special Defense asserts that the City waived its right to sue because it failed to provide written notice pursuant to Part II of the Contract and accordingly is estopped from pursuing a Counterclaim.

At the outset the Court finds that the City Special Defense of the Statute of Limitations need not be addressed since the City failed to brief such claim and it is accordingly deemed abandoned.

The first issue to be decided is the Second Count as to whether the Plaintiff, Hansen, is entitled to its claim of unjust enrichment.

In *Montanaro v. Snow,* 4CA53 the Court stated:

> "Unjust enrichment is a legal doctrine to be applied when no remedy is available to a contract 5 Williston, Contracts (Rev. Ed.) § 1479. In order for the Plaintiff to recover under the doctrine, it must be shown that the defendants were benefitted, that the benefit was unjust in that it was not paid for by the defendants and that failure of payment operated to the detriment of the Plaintiff (citations omitted)."

In a claim for restitution the trial court may balance the equities and take into account "a variety of competing principles to determine whether the Defendant has been unjustly enriched" [citation omitted]. To prove unjust enrichment the Plaintiff must basically show that the Defendant sustained a net gain. *Montanaro.* Id. p. 46.

The Plaintiff in this case failed to prove that the City received a net gain from the work and responsibilities it took on for the City. This Contract was negotiated between Hansen, a moving and storage firm with more than 60 years experience and the City pursuant to the City's duty to remove, store and dispose of evictee's goods on the sidewalk under Connecticut General Statutes § 47a-42.[1]

---

[1] Conn. Gen. Stat. 47a-42 (effective at the time in question) states in relevant part:

Whenever the possessions and personal effects of a defendant or defendants are set out on the sidewalk, street or highway, and are not immediately removed by such defendant, the chief executive officer of the town shall remove and store the same and such removal and storage shall be at the expense of such defendant; and, if such effects are not called for by such

Both the City and Hansen who signed the Contract agreed to be bound by the expressed terms of the contract. There is no claim made in the complaint that Hansen was induced by fraud, mistake or inadvertence in entering into this Contract. The Plaintiff's cite of *Hacket v. City of New Britain* is inapplicable to the facts of this case. The evidence adduced was that Hansen was given the right to use storage facilities for other towns' evictee's goods and did in fact utilize such storage facilities. Hansen who now finds himself as having made a bad deal, wants this Court to rewrite the Contract.

The Court concludes that Hansen failed to prove that the City was unjustly enriched because Hansen did not receive the benefits he expected when he entered into the Contract. Hansen turned the keys to the warehouses back to the City in June 1987 but continued to move and transport evictee's goods for them.

On September 14, 1987, Hansen by letter through his attorney rescinded the Contract. Quoting from said letter: (Plaintiff's Exhibit B)

---

defendant and the expense of such removal and storage is not paid to such chief executive officer within fifteen days after such ejectment, the chief executive officer shall sell the same at public auction, after using reasonable efforts to locate and notify the defendant of such sale and after posting notice of such sale for one week on the public signpost nearest to the place where the ejection was made, and shall deliver to such defendant the net proceeds of such sale, if any, after deducting a reasonable charge for removal and storage of such effect, and, if not, so demanded within thirty days, shall turn over such net proceeds to the town Treasury.

"This letter is to advise you that Mr. Hansen considers this contract null and void, and will not in the future be bound by its terms and conditions. As you know, at the time of the execution of this contract, *it was the opinion and belief of both parties that Mr. Hansen would receive compensation for his services through the State of Connecticut.* Due to this mutual mistake, Mr. Hansen has been put in the position where he had received virtually no compensation for his services under the contract, and if this state of affairs continues, he will be financially unable to perform the services required by the City. (Emphasis added)

An additional problem has arisen regarding the number of moves and storage of the evictees' goods. As you know, Mr. Hansen had the use of a warehouse leased by the City on Grand Avenue. Due to the unexpected and unforeseen number of moves during the last nine months, this storage facility as well as all other facilities to which Mr. Hansen has access are completely filled. He has nowhere to store the additional goods which he is obliged to move and store.

Because of these mutual mistakes and unforeseen changes in circumstances, Mr. Hansen believes that he is justified in rescinding the contract and avoiding any further legal obligation to the City. This letter is also to advise you, however, that until such time as this contract is rebid and awarded in some other form either to Mr. Hansen or some other party, Mr. Hansen will continue to perform the services and duties required of him under the contract insofar as he has the storage capacities to do so. His compensation for these services from this day forward

must be set at the State rate rather than as per the terms of the original contract."

From the terms of the letter Hansen did not realize his expectations. The use of the warehouses were no longer available to Hansen not through any fault of the City but only because Hansen failed to maintain the warehouses by disposing of goods as required under the Contract. Nothing is alleged in the complaint as stated in the letter (Exh. B) concerning mutual mistakes. The unforeseen circumstances referred to in the letter (Exh. B) were brought about by Hansen's failure to follow the procedures for auctions or disposing of evictee's goods under the terms of the Contract. [Defendant's Exhibit 9]

Under the First Count Hansen alleges under paragraph four that it complied with it's [sic] Contract duties and that Hansen worked up through November 30, 1987, continually performing the services requested by the Defendant including moving and storage agreed upon. He claims unpaid $177,000: $150,000 for transportation charges, $22,000 owed for bin construction and $5,000 owed for maintenance fees.

The City argues at the beginning of the Contract Hansen knew that the maximum compensation under the Contract was $10,000.00 the use of two free warehouses and partial payment for the installation of a security system. Both Hansen and the City agree that the Contract did not provide for reimbursement in the event of evictee's unpaid charges. The Contract did provide however, what Hansen was required to do to obtain the expense which it failed to do.

The Court finds that Hansen rescinded the Contract on September 14, 1987 which was not accepted by the City. On October 21, 1987 the City informed Hansen that it was taking over the management of the facilities but that Hansen would continue to have access to allow for the removal of goods stored for East Haven and West Haven.

Under the terms of the Contract [Plaintiff's Exh. A] Hansen was to perform services as set forth under Section 2 in a satisfactory manner as determined by the City. The City further reserved the right to inspect the premises used by Hansen for the storage of evictee's goods.

The City reserved the right to inspect all records including those Hansen was required to keep under the terms of the Contract. The records which Hansen was required to keep were not kept properly and were disorganized.

After many complaints the City became aware that Hansen was not keeping the evictee's goods separated or properly stored. Half of the warehouses resembled a jungle of furniture, scattered and piled to the ceiling. Hansen admitted that he improperly stored the goods of evictees and used the warehouses for other towns goods, mingling it with the City's evictee's goods.

Hansen failed to conduct auctions to dispose of the evictee's goods as required under § 47a-42 of the Connecticut General Statutes. In fact he had a professional conduct only four to five auctions with no accounting for the receipts. Hansen's explanation was that the auctions did not provide any meaningful receipts or that the evictees did not attend the auctions. He further testified the

furniture was worthless. No notice was given to evictees although on many cases he moved them for the State of Connecticut. [See Defendant's Exhibits 7 and 8]

The Court concludes from all the credible evidence in this case that Hansen failed to perform his duties under the Contract in an organized and proper manner. From the testimony the goods of the evictees may have been worthless but it continued to stockpile the warehouses beyond an organized system expected of movers.

The Plaintiff argues that the Contract failed to provide an important term as to compensation. Hansen claimed that it was a latent ambiguity so as to allow for parole evidence. Hansen claimed that the Contract did not provide for compensation if it did not receive sufficient compensation from removal of the evictee's goods in compliance with § 47a-42. The Court allowed parole evidence over the objection of the City to explain what if any recourse Hansen had in the event he was not reimbursed. The testimony of Mr. Mattison, the legal officer who drafted the Contract was that Hansen expected reimbursement from the State. [See Defendant's Exhibits 7 and 8]

It is clear from the language of the Contract that compensation was only $10,000 and the use of warehouses. It was not the responsibility of the City to spell out other contingencies in the Contract for reimbursement of charges if evictees or other purchasers at auctions failed to buy back the removed goods to sufficiently

satisfy Hansen's charges. Hansen failed to conduct auctions or render any objections to the Contract until September 14, 1987 almost at the end of the term of the agreement.

Under the terms of the Contract Hansen was to be paid by the evictees for moving and storage in accordance with paragraph 303I (Plaintiff's Exh. A). Hansen was required to maintain an evictee's file and was informed to keep it substantially in the form provided. Hansen failed to properly keep such records. The Contract even provided for moving of evictee's goods within the city or in the State. The Contract further provided that auctions had to be public and at the contractors expense. The Contract provided that the contractor may dispose of any goods not sold at public auctions and for which evictees failed to pay storage and moving charges in any manner it chooses. The contractor if it decided to dispose of goods at the City's landfill, that was without charge to the contractor (Plaintiff's Exh. A – Para. 304D).

The Court concludes that Hansen's failure to include a provision in the agreement for unreimbursed charges was his responsibility. The Court will not rewrite the Contract. [*See Bank of Boston v. Schlesinger,* 220 Conn. 152, 159.]

Hansen's claim for costs of storage bins is also denied. Again the Contract did not provide for such payment under compensation. The Contract provided for compensation in Article 7, which stated:

> The City shall compensate the Contractor in the amount of $10,000.00 per year for the satisfactory performance of services required under

> Article 3 of this Agreement. The City shall also reimburse the Contractor for one half of the basic telephone services and security system connection charges upon submission by the Contractor a requisition as set forth in subparagraph 303G of the Agreement.
>
> In addition to the compensation provided paragraph 701, the City for satisfactory performance of the services required under Article 3 of this Agreement, will temporarily make space available to the Contractor the 240 Cedar Street, New Haven, Connecticut for 12 months commencing on December 1, 1986 and ending on November 31, 1987.
>
> Compensation provided under Sections 701, 702 and 303F constitutes full and complete payment for all costs assumed by the Contractor in performing this Agreement.

The Contract unequivocally states under *Compensation* Article 7, the monthly charge to be paid by the City and one half the basic telephone charges and security system connections as set forth in subparagraph 303G.

The claim for bins arises under *Storage* of Evictee's Goods 303F. The Plaintiff was aware of the need to construct bins having been in the moving and storage business for 60 years. Hansen's claim that since under 703 for compensation it included payment under 701, 702 and *303F* (emphasis added) that he should be reimbursed for construction of the bins. Such a position is contrary to the express terms under compensation. The more credible evidence is that it was a typographical error referring to 303F when it was intended to be 303G. Hansen's testimony of the cost of $22,000 further is not supported by

any credible evidence. No claim was ever made by Hansen until the further demand of payment for $5,000 only was rejected.

The Court however, finds that payment was not made as recited under the Contract. A $5,000 payment was accepted as partial payment. The sum of $833.34 monthly was to be paid on the first day of each calendar month. Hansen performed some services until he rescinded the contract on September 14, 1987, which the City rejected, which amounted to 9 months of the Contract. The sum of $7,500 was due under compensation of the Contract.

Accordingly, judgment may enter for the net sum of $2,500 on the First Count. The other claims are denied. Judgment may enter in favor of the City under the Second Count.

As to the Counterclaim the City recognized the problems as early as June 1987 yet permitted Hansen to continue its unsatisfactory performance. The City on October 21, 1987 notified by letter Hansen and Charles Douthat, Attorney for Hansen that the City took over both warehouses which Hansen still occupied. The City claims compensation from the Plaintiff's breach of the contract of $96,800, even though they did not rescind until October 21, 1987. They seek compensation from June 1987. They seek the costs of demolishing a warehouse and to clean up another warehouse and construction of new bins. The Court recognizes the City's position that in a contract action that, damages must be proven with some reasonable degree of certainty *Southern New England Contracting Co. v. State,* 165 Conn. 644, 661. The City has

failed to prove that the damages it suffered was reasonably connected to the breach of contract by the Plaintiff. The City allowed the defendant to continue to move evictee's goods and use the warehouses until October 21, 1987 when they took steps to notice its rescission.

> "He who elects to rescind a contract can claim nothing under it (citations omitted). A definite election to rescind a contract is final and operates as a waiver of the right to sue in damages. (citations omitted)"

Duksa v. Middletown, 192 Conn. 191, 204.

The City after October 21, 1987 realized that it too made a bad deal in the selection of a contractor to meet its responsibilities under §47a-42 but it waited until that date to rescind or terminate Hansen. The Court need not address the special defense of failure to give notice under the Contract.

Accordingly, judgment may enter in favor of Hansen as to the Counterclaim.

/s/ Frank S. Meadow
Frank S. Meadow
State Trial Referee

STATE OF CONNECTICUT

No. CV-93 0342979	:	SUPERIOR COURT
MAURICE HANSEN, d/b/a HANSEN MOVING, of East Haven, Connecticut and SAMUEL HANSEN, d/b/a HANSEN MOVING, of East Haven, Connecticut	:	JUDICIAL DISTRICT OF NEW HAVEN AT NEW HAVEN
V.	:	
SALLY BROWN, TOWN CLERK, AGENT OF PROCESS, THE CITY OF NEW HAVEN, of New Haven, Connecticut and BIAGIO DILIETO, AS AGENT OF THE CITY OF NEW HAVEN, of New Haven, Connecticut	:	February 22, 1994

Present: Hon. Frank S. Meadow, State Trial Referee

JUDGMENT

This action by writ and complaint in two counts claiming monetary damages, came to this Court on February 2, 1993; thence to March 4, 1993, when the plaintiffs filed a demand for disclosure of defense; thence to March 8, 1993, when the plaintiffs filed a motion for default for failure to disclose a defense; thence to the same date, when the plaintiffs filed a motion for default for failure to plead, and the motion was granted by this Court; thence to March 24, 1993 when the plaintiffs filed a motion for a hearing in damages, and the defendants filed an objection

to the plaintiffs' motion for default for failure to appear; thence to March 26, 1993, when the defendants filed an answer and special defenses, a disclosure of defense, and an objection to the plaintiffs' motion for default for failure to plead a defense; thence to March 31, 1993, when the plaintiffs filed a motion to strike the special defenses; thence to April 12, 1993, when the defendants filed a motion to set aside the default, and the motion was granted by the Court (Gordon, J.); thence to April 13, 1993, when the plaintiffs filed an answer to the defendants' special defenses; thence to April 23, 1993, when the defendants filed an objection to the plaintiffs' motion to strike the special defenses; thence to May 19, 1993, when the defendants filed a request for leave to file an amended answer, special defenses, and counterclaim, and filed a proposed counterclaim; thence to June 1, 1993, when the plaintiffs filed an answer and special defense to the proposed counterclaim; thence to September 28, 1993, when the plaintiffs filed a motion for summary judgment; thence to October 15, 1993, when the defendants filed an objection to plaintiffs' motion for summary judgment; thence to October 18, 1994, when the Court (Gray, J.) denied the plaintiffs' motion for summary judgment; thence to November 1, 1993, when the defendants filed an answer to the plaintiffs' special defense; thence to the present time, when the parties appeared and were at issue to the Court, as on file.

The Court, having heard the parties, finds the issues in part for the plaintiffs and in part for the defendants on Count I, for the defendants on Count II, and for the plaintiffs on the counterclaim.

Whereupon it is adjudged that judgment may enter in favor of the plaintiffs for the net sum of $2,500 on Count I; judgment may enter in favor of the defendants on Count II; and judgment may enter in favor of the plaintiffs on the counterclaim.

By the Court

/s/ Frank S. Meadow
Hon. Frank S. Meadow,
State Trial
Referee

APPELLATE COURT

THE STATE OF CONNECTICUT

A.C. NO.	:	SUPERIOR COURT
MAURICE HANSEN D/B/A HANSEN MOVING, *ET. AL.*	:	J.D. OF HAVEN
V.	:	AT NEW HAVEN
THE CITY OF NEW HAVEN, *ET. AL.*	:	MARCH 8, 1994

MOTION FOR ARTICULATION

Pursuant to Practice Book Section 4051, the Appellant hereby petitions this Court seeking a further articulation of the factual basis of the trial court's decision of February 22, 1994. He further seeks a clarification of the legal basis for the trial court's rulings. The unclear parts are listed as follows:

1. The Plaintiff sought to introduce parole evidence to clarify the parties expectations. The Court allowed 'parole evidence' to come in. In fact, the Court stated the door is now open. However, when the plaintiff sought to introduce evidence of the plaintiff's expectations through the bid proposal, the trial court denied introduction of this document. The Appellant requests a further clarification of the Court's finding on the issue of parole. The Appellant also requests the legal basis for that ruling, whatever that ruling might be.

2. The Court finds that the Plaintiff rescinded the contract on September 14th, 1987, which was not accepted by the Defendant. The Court also finds that the City informed Plaintiff it was taking over management of the facility on October 21, 1987 thereby

rescinding said contract on October 21, 1987. The Appellant requests a further clarification of the Court's factual findings as to the date of rescission when the Court, while hearing Mr. Mattison's testimony specifically questioned him regarding why he acknowledged that the Defendant and Plaintiff agreed in June of 1987 that the Defendant would take over the warehouses, and the City had Plaintiff turn his keys in at that time. The trial court, after listening to all the witnesses, asked Mr. Mattison why it took the City so long to get a letter to Plaintiff regarding his turning in of the keys, and Mattison stated the Office of the Corporation Counsel was too busy. Appellant requests that the Court clarify what appeared to be a finding of rescission on or about June of 1987, taken as proven at the trial, but now unproven in its memorandum of decision.

3. If the Plaintiff is found to have rescinded the contract on or about September 14, 1987, but said rescission is found not to be accepted by the Defendant at that time, the Appellant requests a further articulation of the factual basis of the trial court's decision to award Plaintiff damages only up through September 14, 1987. Has the trial court found that Plaintiff did not in fact work through October of 1987? Also, upon articulating that finding of fact, the Appellant requests the trial court's legal basis for finding damages up through only September of 1987.

4. Regarding number three above, the Appellant also requests an articulation of how long the trial Court determined Plaintiff's total performance to be, from what date to what date. The record seems to indicate that Plaintiff completely performed until the end of the contract, or December of 1987.

5. Regarding numbers 3 and 4 above, the Appellant requests a further articulation to clarify the legal

basis for the ruling awarding damages only until September, and not October, or December on either count.

6. The Appellant also requests the trial court to articulate the legal basis for, in its memorandum of decision, entertaining the restitutionary count prior to the breach of contract count, when the weight of authority appears to require entertaining the interests in the following order: 1. expectation; 2. reliance; 3. restitution.

7. The Appellant also requests the trial court to articulate the factual basis for awarding Plaintiff only $2,500 on the contract. If Plaintiff worked from December through September, including December, the compensation should be for ten and not nine months. The Appellant requests further articulation of the trial court's factual basis for its ruling.

8. The Appellant also requests the trial court to articulate the factual basis for its conclusion that the Plaintiff failed to prove that the City received a net gain from the work and responsibilities it took on for the City. The Plaintiff introduced the total cost to Plaintiff of over $45,000 in work receipts.

9. The Appellant requests that the trial court articulate the factual basis for its conclusion that the contract did provide, however, what Hansen was required to do to obtain the expense which it failed to do. Both parties admitted that the contract did not in fact provide for this contingency, and this is the reason Plaintiff sought to introduce parole, to determine the unwritten term.

10. If the trial court finds that Hansen rescinded the contract on September 14th, 1987, and that the City rescinded the contract on October 21st, 1987, despite the fact that both parties testified that the City had

Plaintiff turn his keys in in June of 1987, the Appellant requests an articulation of the legal basis for denying Plaintiff restitution for the period of time from October through December, when Plaintiff continued to perform, since the contract itself provides for restitution in that situation, and it is the only available remedy for Plaintiff.

11. At the beginning of the trial, the trial court questioned both counsel on why or whether it was appropriate for Plaintiff to claim both expectation and restitution. The trial court seemed to be of the position that one and only one could be awarded. The Plaintiff requests the trial court to articulate both the factual basis and legal basis for this position, so Plaintiff can be clear on it for appeal purposes.

12. The Plaintiff requests further that the trial court provide the legal basis for denying Plaintiff his claim for bin construction.

13. The Plaintiff requests that the trial court provide the factual basis for its conclusion that Plaintiff failed to prove its construction costs, when both parties testified as to a similar amount regarding the expense of bin construction.

14. The plaintiff requests that the trial court articulate the factual basis for its conclusion that the plaintiff failed to render any objections until September 14, 1987, when both sides testified that the Plaintiff and Defendant agreed that Defendant should take over the warehouses in June of 1987, and that Plaintiff did in fact communicate rescission at that time, and the defendant agreed by taking over.

15. The Plaintiff requests that the trial court articulate the legal basis for its conclusion that it finds for the Defendant on count 2 of Plaintiff's complaint.

THE PLAINTIFF-APPELLANT

BY /s/ Frank P. Cannatelli
FRANK P. CANNATELLI,
ESQ.

ORDER

The foregoing having been presented to the court, it is hereby ORDERED:

GRANTED //// DENIED.

BY THE COURT 3/31/94

/s/ Frank F. Meadow
JUDGE STR

NOTICE SENT: 4/4/94
FRANK P. CANNATELLI
NEW HAVEN CORPORATION COUNSEL
CLERK, SUPERIOR COURT, NEW HAVEN
CV93 0342979S
TOPAC

MAURICE HANSEN ET AL. *v.* CITY OF NEW HAVEN ET AL.
(13380)

DUPONT, C.J., and SCHALLER and SPEAR, JS.

Argued April 20 – decision released May 23, 1995

Action to recover damages for breach of contract, brought to the Superior Court in the judicial district of New Haven, where the defendants filed a counterclaim; thereafter, the matter was referred to *Hon. Frank S. Meadow,* state trial referee; judgment for the plaintiffs, in part, on first count of the complaint and on the counterclaim, from which the plaintiffs appealed and the defendants cross-appealed to this court. *Affirmed.*

Frank P. Cannatelli, for the appellants-appellees (plaintiffs).

Steven L. Sanalot, assistant corporation counsel, with whom, on the brief was *Ailelen M. Bell,* former deputy corporation counsel, for the appellees-appellants (defendants).

PER CURIAM. The judgment is affirmed.

SUPREME COURT
STATE OF CONNECTICUT

NO. PSC-94-0370

Maurice Hansen et al.

v.

City of New Haven et al.

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the plaintiff the Estate of Maurice Hansen for certification to appeal from the Appellate Court (38 Conn. App. 902 [AC 13380]), it is hereby ordered that said petition be, and the same is hereby denied.

BY THE COURT,

/s/ Alan M. Illegible
ASSISTANT CLERK-APPELLATE

Dated: September 13, 1995
Notice sent: 9/13/95
Clerk, Superior Court, New Haven CV93-0342929S
Clerk, Appellate Court
Reporter of Judicial Decisions
SAO
Frank P. Cannatelli
New Haven Corporation Counsel

Frank P. Cannatelli in support of petition.

STATE OF CONNECTICUT

SUPREME COURT

NO. AC 13380
PSC-94-0370

MAURICE HANSEN ET AL.

v.

CITY OF NEW HAVEN ET AL. : OCTOBER 16, 1995

ORDER

THE MOTION OF THE PLAINTIFF, FILED SEPTEMBER 25, 1995, TO RECONSIDER ORDER DENYING APPELLANT'S PETITION FOR CERTIFICATION, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED **DENIED,** THE REQUEST FOR ORAL ARGUMENT IS ALSO **DENIED.**

BY THE COURT,

/s/ Francis Illegible
CHIEF CLERK

NOTICE SENT: 10/16/95
FRANK P. CANNATELLI
NEW HAVEN CORPORATION COUNSEL
CLERK, NEW HAVEN JUDICIAL DISTRICT
(CV93-0342979S)
HON. FRANK MEADOW
REPORTER OF JUDICIAL DECISIONS

(2)

Supreme Court, U.S.
FILED
APR 8 1996
CLERK

No. 95-1426

In The

Supreme Court of the United States

October Term, 1995

THE ESTATE OF MAURICE HANSEN,

Petitioner,

v.

THE CITY OF NEW HAVEN,

Respondent.

On Petition For Writ Of Certiorari To The United States Supreme Court From A Denial Of Said Writ Of Certiorari To The Supreme Court Of The State Of Connecticut

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STEVEN G. MEDNICK,
Corporation Counsel

STEVEN L. SAMALOT
Assistant Corporation Counsel
Counsel of Record
165 Church Street
New Haven, Connecticut 06510
Telephone: (203) 946-7958

April 5, 1996

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

JURISDICTION 1

COUNTER-STATEMENT OF THE CASE 2

REASONS FOR DECLINING REVIEW 3

1. The Petitioner Failed To Raise The Alleged Constitutional Violation Before The State Court Below 3

2. Petitioner's Federal Claim is Insufficient at Law 5

CONCLUSION 7

TABLE OF AUTHORITIES

Page

CASES

American Surety v. Baldwin, 287 U.S. 155 (1932) 3,4

Cromwell v. Randle, 10 Pet. 368 (1836) 4

Great N.R. Co. v. Alexander, 246 U.S. 276 (1918) 6

Honeyman v. Hanan, 300 U.S. 14 (1936) 4

Millinar v. Hartupee, 73 U.S. 258 (1868) 5

Mutual Life v. McGrew, 188 U.S. 291 (1903) 4

Philip Cardinale, Jr. v. State of Louisiana, 394 U.S. 437 (1969) 1, 3, 6

Smith v. Maryland, 59 U.S. 71 (1855) 6

Thomas v. Iowa, 209 U.S. 258 (1908) 5

Wabash R. Co. v. Flannigan, 192 U.S. 29 (1904) 6

Wick v. Chelan Electric Co., 280 U.S. 108 (1929) 7

STATUTES

28 U.S.C. § 1257(a) 1

28 U.S.C. § 1257 (1948) 1

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The City of New Haven respectfully requests that this Court deny the petition seeking review of a state trial court decision which was denied certification to appeal on September 13, 1995 by the State of Connecticut. This petition brought on March 5, 1996 seeks to interpose a federal question which was raised for the first time before the Supreme Court of the State of Connecticut. Petitioner's failure to raise this issue at the appropriate time precludes consideration by the United States Supreme Court.

JURISDICTION

The petitioner erroneously asserts that this Court has jurisdiction to review a federal question which was not properly raised in the lower courts pursuant to federal statute 28 U.S.C. § 1257(a). The alleged federal question was never raised, preserved or passed upon by the courts below. This failure violates the long established requisite that the United States Supreme Court has the power to review "[f]inal judgments or decrees rendered by the highest court of a State in which a decision may be had. . . . " 28 U.S.C. § 1257 (1948); *See also, Philip Cardinale, Jr. v. State of Louisiana*, 394 U.S. 437, 22 L.Ed.2d 398, 89 S. Ct. 1162 (1969). No final review by the state court has occurred. As a result this Court lacks jurisdiction over this Petition For Writ Of Certiorari.

COUNTER-STATEMENT OF THE CASE

The petitioner entered into a written contract with the City of New Haven which bound both parties to its express terms. For approximately six months he attempted to perform the terms of the contract. After six months of performance petitioner sought to modify the terms of the contract to seek additional reimbursements that were not provided for in the contract. The City did not agree to his proposed modification. Pet. for Cert. at 2-3.

The petitioner brought suit for breach of contract and unjust enrichment seeking both damages and restitution. The trial court addressed these claims in its Memorandum of Decision, awarding partial damages but denying the unjust enrichment claim as the petitioner did not prove either that he was entitled to the benefits he sought or that the City received a benefit. Pet. App. 3-4. Petitioner appealed to the Appellate Court of the State of Connecticut without raising any federal statutory or constitutional allegations. The Appellate Court affirmed the trial court's decision. Petitioner thereafter filed a Motion for Articulation which did not contain any constitutional issues. Pet. App. 16-20. That motion was denied as was his Motion for Review. Pet. for Cert. at 4. Petitioner then sought unsuccessfully to have the trial court reargue the matter. Thereafter he petitioned to the Supreme Court of the State of Connecticut for certification, where, for the first time, he raised a federal constitutional issue for review.

REASONS FOR DECLINING REVIEW

1. The Petitioner Failed To Raise Any Federal Constitutional Violation Before the State Courts, Below.

A writ of certiorari to review a judgment of a state court will be dismissed where the federal claim was not seasonably made in the state court. *American Surety v. Baldwin*, 287 U.S. 155, 161, 77 L.Ed. 231, 235 (1932). In their Petition for Certification to the State of Connecticut, the petitioner raised, for the first time, a federal question that he failed to allege in earlier proceedings before either the trial court or the appellate courts. The issues raised by the petitioner in the lower courts were wholly state matters, i.e., breach of contract and unjust enrichment. Pet. App. 1. The trial court decision thereafter upheld by the appellate court was based exclusively on state law. The State Supreme Court denied certification without issuing an opinion. Pet. App. 22.

Petitioner now seeks review by this Court without establishing that the alleged federal question was raised, preserved or passed upon the Courts, below. *Cardinale*, supra, at 438. No evidence on the record supports a contention that the federal question was presented to the state court. The state court must be afforded the opportunity to review a federal question before this Court can undertake review.

> "Before this court may undertake review of a decision of a State it must appear affirmatively from the records, not only that the Federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question was necessary

> to the determination of the cause." *Honeyman v. Hanan*, 300 U.S. 14, 18, 81 L.Ed. 476, 479 (1936).

Petitioner's writ fails this procedural requirement since the state court was neither presented nor did it entertain the alleged federal question.

Petitioner cannot claim that by raising a federal question for the first time on a Petition for Certification to the State Supreme Court, the presentation requirement is met. Connecticut General Statute Section 52-263 permits appeals from Superior Court for parties aggrieved by the decision of the court for "any question or questions of law arising in the trial. . . . " Whenever state law requires presentation at the trial level for review of the highest court, failure to present the issue at the appropriate level precludes the highest court from having considered the issue presented. *Mutual Life v. McGrew*, 188 U.S. 291, 47 L.Ed. 480, 23 S. Ct. 375 (1903). This Court lacks jurisdiction since petitioner was required to raise this issue at the trial level, pursuant to valid state law. Petitioner's failure to raise the federal question at the appropriate time prevented the State Supreme Court from entertaining the federal question before it for the first time. The highest court will not revise judgment of a court below on a question not therein raised. *Id.*

Petitioner's due process claim is therefore raised before this Court without notice and opportunity to be heard by the state court, and is not seasonally made, so as to serve as a basis for review by this Court. *American Surety, supra,* at 163. Accordingly this Court should not exercise jurisdiction as it would be in violation of this long standing principle. *Cromwell v. Randle*, 10 Pet. 368,

391 (1836). The Petition for Writ of Certiorari should therefore be denied.

2. Petitioner's Federal Claim is Insufficient at Law.

Even assuming that the constitutional question was raised it was done so insufficiently. Something more than the bare assertion that authority is exercised under the United States Constitution is essential to the jurisdiction of the Federal Supreme Court. *Millinar v. Hartupee*, 73 U.S. 258, 18 L.Ed. 829 (1868).

The petitioner first alleged a constitutional issue in his Petition for Certiorari to the Supreme Court of the State of Connecticut. His allegation read as follows:

> "the Appellant has a constitutional right to appeal and such denial thereby amounts to denial of a procedural due process of law, and further denial of the estate's property interest in the Appellant's performance under the contract." Resp. App. 1.

Petitioner now seeks review from this Court of these alleged federal due process violations. This Court has stated that to sufficiently raise a federal question concerning a violation of Fourteenth Amendment, a mere claim of a denial of due process does not constitute adequate specificity to confer its jurisdiction. *Thomas v. Iowa*, 209 U.S. 258, 52 L.Ed. 782, 28 S. Ct. 487 (1908). A non-specified due process allegation provides this Court little or no direction to the alleged federal claim or to the offending state statute. This Court is without jurisdiction to review a judgment where there is no substance or merit in the

federal question upon which jurisdiction depends. *Wabash R. Co. v. Flannigan*, 192 U.S. 29, 48 L.Ed. 328, 24 S. Ct. 224 (1904); *Great N. R. Co. v. Alexander*, 246 U.S. 276, 62 L.Ed. 713, 38 S. Ct. 237 (1918). Therefore, this Court should decline jurisdiction since petitioner's allegation is so vague that it fails to promote a legitimate basis for review and is merely conclusory since no facts are alleged to support its contention.

Petitioner improperly seeks to cure his defective due process claim in his Petition for Writ of Certiorari. He attempts to cure the defective claim by adding more specificity, citing the state statute which he now alleges avails him of a property interest pursuant to the Fifth and Fourteenth Amendments. This revision cannot be made as petitioner is limited to what is in the record. This Court has expressly stated that what is present for its review is that which appears in the record and specifically raised in the courts below. It is not enough that it might have been made. *See, Smith v. Maryland*, 59 U.S. 71, 15 L.Ed. 269 (1855). Petitioner is now precluded from expanding the record.

CONCLUSION

For the above mentioned reasons this Court should deny certiorari. The state court has not been afforded the opportunity to review a constitutional violation and thus, this Court has no basis to grant such review. *Cardinale*, supra at 439. Furthermore, the vague federal question raised only upon petition to the State Supreme Court failed to meet the requirements of the state statute drawn

into question or identify a specific constitutional violation as this Court demands before jurisdiction for review will be granted. *Wick v. Chelan Electric Co.*, 280 U.S. 108, 111, 74 L.Ed. 212, 217, 50 S. Ct. 41 (1929). Accordingly, the Court should deny this Petition for Writ of Certiorari.

Respectfully submitted,

STEVEN G. MEDNICK
Corporation Counsel

STEVEN L. SAMALOT
Assistant Corporation Counsel
Counsel of Record

Office of the Corporation Counsel
City of New Haven
165 Church Street, 4th Floor
New Haven, CT 06510
Telephone: (203) 946-7958

A.C. NO. 13380	:	SUPREME COURT
MAURICE HANSEN, ET AL.	:	J.D. OF HARTFORD
VS.	:	AT HARTFORD
THE CITY OF NEW HAVEN, ET AL.	:	JUNE 26, 1995
	:	

PETITION TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

FOR CERTIFICATION FROM THE APPELLATE COURT

The Estate of Maurice Hansen, duly represented by a properly substituted party appellant, Mrs. Margaret Hansen, hereby petitions the Supreme Court of the State of Connecticut for certification to appeal from the affirmation by the Appellate Court of an erroneous judgment of the Superior Court in this case.

1. The questions presented for review are as follows:

a. Did the trial court err in denying the Appellant's motion to articulate dated March 8th, 1994, whereby the Appellant asked the trial court judge to clarify the dates of performance by Plaintiff under the contract specifying the beginning to the end of Plaintiff's performance under the contract.

b. Did the Appellate Court err in granting Appellant's Motion for Review dated April 6th, 1994, but denying Appellant's requested Relief on May 25th, 1994, when Appellant has a constitutional right to appeal and such denial thereby amounts to a denial of procedural process of

law, and a further denial of the estate's property interest in Appellant's performance under the contract.

c. Did the Court err in allowing parole evidence to come in to explain an 'omitted' or ambiguous term, and upon opening the door to such evidence as stated on the record, allowing the defendant to submit documents evidencing what their expectations were, but when Plaintiff sought to admit their bid proposal to explain what Plaintiff's expectations were, the Court denied such offer to the prejudice of Plaintiff's case.

d. Did the Court err in considering count two, or the Restitutionary Court [sic] prior to the Breach of Contract count, thereby clearing making a ruling contrary to the evidence regarding parole evidence, and practically all other findings by the trier of fact.

e. Did the Court err in finding that the Plaintiff rescinded the contract on September 14th, 1987, which was not accepted by the Defendant, and the Defendant rescinded on October 21st, 1987, when the clear weight of the evidence supports a rescission date of June of 1987 when the Defendant told Plaintiff to turn in keys to the warehouses, and both parties testified that this was the case, even though the formal documentation of rescission came in September for Plaintiff and in October for Defendant.

f. Did the Court err in finding damages based upon expectation for breach of contract for the Plaintiff as of the September date which was not accepted by the Defendant, instead of

the October date wherein Plaintiff, was still performing.

g. Did the Court err in only awarding damages based upon the contract through September when the record is clear that Plaintiff performed up through December of 1987.

h. Did the Court err in finding for the Defendant on the second count of the complaint when the Plaintiff still performed after the date of October (as found by the trial court), and thereby entitled to his out-of-pocket expenses as stated in the contract.

i. Did the Court err in awarding damages based upon expectation for only nine months when the weight of the evidence clearly demonstrates that the Plaintiff worked on the contract December through October (if the Court is correct), which amounts to over nine months.

j. Did the Court err in concluding that the Defendant did not receive a net gain here as a result of Plaintiff's efforts and in light of the evidence introduced at trial.

k. Did the Court err in denying Plaintiff restitution for the months of work after rescission occurred, whatever that date is determined to be.

l. Did the Court err in not comprehending that in this factual situation, that recovery could and should be based upon both expectational and restitutionary interests.

m. Did the Court err in denying Plaintiff his claim for bins constructed by Plaintiff when the error made was the draftor's error and should be determined against the draftor.

n. Did the Court err in stating that the Plaintiff did not adequately prove his damages for the construction of bins when both parties testified as to the cost of such bins, and both sides acknowledged Plaintiff to have constructed said bins.

o. Did the Court err in concluding that the Plaintiff did not in fact object to the contract until September when the trier heard evidence from both sides that both parties agreed to switch roles and Defendant would take over the operation of the storage facilities in June of 1987 but evidenced later due to the busy schedules, etc. and Plaintiff told Defendants of his intent to rescind.

2. The basis for certification is as follows:

Pursuant to Section 4127(3), where as here, the Appellate Court has so far departed from the accepted and usual course of Judicial Proceedings, or so far sanctioned such a departure by any other Court, as to call for an exercise of the Supreme Court of Connecticut 'Supervisory Powers'; The Appellate Court has sanctioned the trial court's decision to adjudge Plaintiff's equitable cause of action before the legal cause of action, thereby manipulating the facts, and denying Plaintiff his day in Court, and his relevant property interests. Pursuant to Section 4127(4), an important question of great public importance exists: Should the trial court deny a motion to articulate, and the Appellate Court sanction such denial, when the factual determination inquired about, the dates of performance under the contract, are essential facts to Plaintiff's appeal, the denial of which abridges Plaintiff's statutory right to appeal, thereby denying Plaintiff's estate his day

in court, and further violates his constitutional rights under the Due Process Clause, including his estate's property interest in the Decedent's performance. The Appellate Court here has sanctioned a denial of Plaintiff's constitutional rights, making this even more egregious whereby Plaintiff/Appellant has died, and the Appellate Court should be more, not less, vigilant of the rights of the deceased.

3. The facts are the Plaintiff owned and operated a moving and storage business known as Hansen Trucking Company. The Defendant City of New Haven sought proposals through publication of people interested in contracting with the City in order to relieve it of its duties pursuant to C.G.S. Section 47a-42, requiring the City to move, haul, and store evictee goods and belongings. Both Plaintiff and Defendant entered into a written contract on December 12, 1986, whereby said effective dates of the contract were to be retroactive to December 1, 1986 through December 1st, 1987. The Plaintiff accepted said terms of said contract and employment, and substantially performed the services thereunder up to June of 1987. When Plaintiff had not received one check from Defendant for performance after six months, despite the fact that the contract called for monthly payments to Plaintiff, Plaintiff communicated his dissatisfaction with Defendant and turned in keys to the storage facilities in June of 1987. Plaintiff thereby, based upon the Defendant's breach of non-payment, and his formal act of turning in the keys, amounted to Plaintiff's rescission of the contract as of this date. The trial court found rescission to occur at the date alleged by Defendant, or October of 1987, but only allowed Plaintiff his damages until September of

1987, the date the court found Plaintiff to have rescinded. Although Plaintiff performed for the entire contract period, or until December of 1987, the Court only paid Plaintiff through September. The Plaintiff alleged breach of contract in count one, and restitution in count two. The Court decided the equitable issue first, and then decided the breach of contract issue second. The Plaintiff also claimed damages for bin construction under the contract, which was denied by the court.

3. [sic] The trial court found for Plaintiff on count one, or the breach of contract count, in the amount of $2500.00. It denied count two, or the restitutionary count and decided for the defendant on that count. The trial court never did specify the dates of performance, but did pay Plaintiff until September of 1987, although finding the actual date of rescission to be October of 1987. The trial court nowhere specifies the dates of performance although asked to specify said dates in Plaintiff's motion to articulate.

The Appellate Court affirmed by a per curiam decision.

4. Appellant performed under a contract with the defendant, whereby both parties rescinded at some point. The trial court never specified the dates of performance. The trial court only allowed payment under the contract until September, although Plaintiff performed through December of 1987. The trial court, when asked to specify the dates of performance, material to Plaintiff's case, thereby refused.

5. The appendix is Exhibit A, attached. Exhibit B is Appellant's Motion For Review. Exhibit C is the Order of the Appellate Court granting Appellant's motion for

review, but denying the relief sought. Exhibit D is Appellant's motion to reargue, while Exhibit E is the denial of that motion. Exhibit F is the per curiam decision of the Appellate Court.

5. [sic] Appellant, Margie Hansen, as Administrator of the Estate of Maurice Hansen, 2 Northeast Drive, North Haven, Connecticut 06473. Phone: 239-4794; Counsel: Frank Cannatelli, 7 S. Main St., Branford, Conn. 06405; Phone: 483-1066. Juris No. 308656. Appellees, City of New Haven, Care of City Clerk, 200 Orange Street, New Haven, Conn. 06510. Phone: 787-8346. Counsel for Defendants: Aileen Bell, 165 Church Street, New Haven, Conn. 06510. Phone: 787-7958. Juris No. 42715.